

## **WHAT IS MEDICAID ESTATE RECOVERY?**

State and federal law requires the Department of Human Services to make claims against the estates of some Medicaid recipients. A claim will be made against the estate of any recipient who was age 55 or older when the Medicaid benefits were provided, or against the estate of the spouse of that Medicaid recipient. The claim is for the amount of Medicaid issued to a person age 55 or older. State law controls the distribution of a decedent's estate. It limits the kinds of claims that can be paid before any Medicaid claim. Funeral expenses are limited. Assets under BIA jurisdiction are not subject to recovery. Assets under tribal jurisdiction are subject to recovery only if permitted by tribal law.

## **WHAT IF THERE IS A SURVIVING SPOUSE OR CHILDREN?**

No claim for Medicaid that was correctly issued must be paid during the lifetime of a Medicaid recipient's surviving spouse or

while the recipient's surviving child is under age 21 or blind or disabled.

## **WHAT IF THE DECEDENT LEAVES A WILL?**

A decedent's estate must first pay the decedent's debts. A will does not change that. Unless an estate has sufficient cash to pay all claims, estate property is sold to pay the claims. Family members can purchase estate property at fair market value.

## **CAN FUNERAL EXPENSES BE PAID FROM AN ESTATE?**

If a Medicaid recipient designates funds for funeral expenses, those funds (up to \$8,000) and any earnings from those funds can be used for funeral expenses. If there are no funds designated for funeral expenses, the estate can spend no more than \$3,000 to meet the expenses. Any funds designated for funeral expenses must be reported to the county social service office before the recipient's death.

Family and friends can use their

own money to help pay for the funeral expenses. Additional amounts cannot be paid from assets in the decedent's estate before Medicaid claims are paid in full.

## **WHAT OTHER CLAIMS CAN BE PAID BEFORE THE MEDICAID CLAIM IS PAID?**

The decedent's estate can pay funeral expenses, expenses of last illness, the necessary and reasonable costs of administration, certain other assistance claims, and claims on behalf of the state hospital. The Medicaid claims must then be paid in full before other creditors or claims can be paid.

## **WHAT IF AN ACCOUNT IS PAYABLE TO SOMEONE ELSE AT THE DECEDENT'S DEATH?**

Unless all estate claims are paid in full, money a decedent left in a joint account, an "in trust for" (ITF) account, or any other payable on death (POD) account must be made available to pay claims and costs of probate. If the

money was properly designated as a deposit for funeral expenses, the money can be used for that purpose.

## **HOW IS THE MEDICAID CLAIM MADE?**

If a decedent leaves only cash and limited personal property, the county social service board, or the Department of Human Services, will usually collect the amount that must be paid for assistance claims using an Affidavit for Collection of Personal Property. Sometimes family members will be asked to help sell personal property that has value so claims can be paid. If there is real property that is worth the cost of probate, or if there is some other reason a probate is necessary, the person named in a will or some other family member can be appointed personal representative and properly distribute the decedent's estate. Attorney's fees and other reasonable costs of administration can be paid from the estate. The county social service office will usually initiate probate only if there is no family member willing or able to do so.

## **WHAT SHOULD I DO IF I NEED HELP REVIEWING THIS INFORMATION?**

This brochure provides only general information about estates and Medicaid claims. If you have questions about probate or wills, or if you are the personal representative for an estate, please ask your private attorney. If you need assistance in reviewing this brochure, contact your county social service office.

# **MEDICAID**

# **ESTATE**

# **RECOVERY**



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